2884

SUPREME COURT OF THE UNITED STATES.

No. 87.

RICHARD D. WOOD, JOHN YARROW, JAMES ABBOTT, and JOSEPH BACON, Copartners under the name and style of WOOD, ABBOTT & Co., Appellants,

vs.

ALEXANDER C. DAVIS.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Certificate of Clerk	1	3
Citation and return	3	3–4
Affidavit of R. D. Wood *& al.*	5	4
Petition and præcipe for appeal	6	5
Bill of complaint	10	6
Answer of respondents	34	15
Proceedings in State Court	94	40
Proceedings in Circuit Court United States	97	42
Decree or order remanding cause to State Court	98	43

CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois:

ALEXANDER C. DAVIS
vs.
RICHARD D. WOOD, JOHN YARROW, JAMES ABBOTT and JOSIAH BACON, partners under the name and style of WOOD, ABBOTT & Co., THOMAS FOSTER, NICHOLAS STAHL, E. R. HOOPER and JOHN W. CAMPBELL.

In Equity.

I, William H. Bradley, Clerk of the Circuit Court of the United States of America in and for the Northern District of Illinois, in the Seventh Circuit, do hereby certify to the Supreme Court of the United States, that the bill of complaint hereto annexed, is a true and correct copy of the original bill now on file in my office in the above entitled cause, with the exception and omission of the exhibits thereto attached. I further certify, that the answer of said defendants, Richard D. Wood, John Yarrow, James Abbott and Josiah Bacon, hereto annexed, is a true and correct copy of the original now on file in my office in said cause, with the exception of the exhibits thereto attached. I further certify, that the pleas of the Circuit Court in and for the county of Jo. Daviess, in the State of Illinois, hereto annexed, are true transcripts from the certified copy of said pleas, now remaining on the files of my office. I further certify, that the record of the proceedings had in the above entitled cause, in the said Circuit Court of the United States for the District of Illinois, hereto annexed, is a true and correct transcript of the records of the proceedings had in said cause, now remaining in my office.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at Chicago, this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the seventy-ninth.

[SEAL.] WILLIAM H. BRADLEY,
Clerk.

UNITED STATES OF AMERICA, ss.
Northern District of Illinois:

To Alexander C. Davis, greeting:—You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to an appeal allowed, entered and filed in the

Clerk's office of the Circuit Court of the United States for the Northern District of Illinois, wherein Richard D. Wood, John Yarrow, James Abbott and Josiah Bacon are appellants, and you are appellee, to show cause, if any there be, why the judgment and decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, Thomas Drummond, United States Judge of the Northern District of Illinois, this fifth day of March, in the year of our Lord one thousand eight hundred and fifty-five.

[SEAL.] THOMAS DRUMMOND.

Served the above citation by leaving a true copy of the same with the above named Alexander C. Davis, this 8th day of March, A. D. 1855.

RICHARD H. JACKSON.

Subscribed and sworn to before me this 8 day of March, 1855.

M. C. BOSTWICK,
Commissioner of Circuit Court U. S. for District of Illinois.

Filed March 5, 1855.

WM. POPE,
Clerk.

By J. T. MOULTON,
D'y Clerk.

ALEXANDER C. DAVIS
vs.
RICHARD D. WOOD *et al.*

In Circuit Court of the United States for the Seventh Circuit and Northern District of Illinois.

In Equity.

And now on this 5th day of March, A. D. 1855, the affidavit of Richard D. Wood, James Abbott and Josiah Bacon, that the appeal taken by themselves and their copartner John Yarrow, is not taken for the purpose of delay, is duly filed; and the security referred to in the petition for leave to appeal, being duly entered and approved, the same is accordingly allowed, and the appellants are ordered to serve the usual citation according to law.

THOMAS DRUMMOND.

Filed March 5, 1855.

WM. POPE,
Clerk.

By J. T. MOULTON,
D'y Clerk.

ALEXANDER C. DAVIS

vs.

RICHARD D. WOOD, JOHN YARROW, JAMES ABBOTT, and JOSIAH BACON, Copartners under the name and style of WOOD, ABBOTT & Co., THOMAS FOSTER, NICHOLAS STAHL, E. R. HOOPER, and JOHN W. CAMPBELL.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Seventh Circuit and District of Illinois:

To the Honorable the Judges of said Court.

The petition of the above named Richard D. Wood, John Yarrow, James Abbott, and Josiah Bacon, respectfully presents, that a decree has been made by this Court in the above cause, remanding the bill of the complainant to the State Court, from which decree these defendants desire to appeal to the Supreme Court of the United States.

Your petitioners therefore pray leave to enter such appeal in due form upon giving security and filing their affidavit that the appeal is not taken for the purpose of delay, but because they verily believe injustice has been done. And so they will ever pray, &c.

R. D. WOOD,
JAMES ABBOTT,
JOSIAH BACON.

STATE OF PENNSYLVANIA,
City of Philadelphia:

Affirmed to before me, and subscribed in my presence: witness my hand and seal as a Notary Public of the Commonwealth of Pennsylvania for the City of Philadelphia, this sixth day of February, A. D. 1855.

[SEAL.] DAVID B. BIRNEY,
A Notary Public of the State of Pennsylvania for the City of Philadelphia.

Alexander C. Davis *vs.* Richard D. Wood, John Yarrow, James Abbott *et al.* Petition (& præcipe) for appeal.

Filed March 5, 1855.

WM. POPE,
Clerk.
By J. T. MOULTON,
D'y Clerk.

E. R. HOOPER &
J. W. ARNOLD,
Sol'rs for Def'd'ts.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
District of Illinois:

In Chancery.

ALEXANDER C. DAVIS
vs.
RICHARD D. WOOD, JOHN YARROW, JAMES ABBOTT, & JOSIAH BACON, partners under the name and style of WOOD, ABBOTT & Co., THOMAS FOSTER, NICHOLAS STAHL, E. R. HOOPER and JOHN W. CAMPBELL.

Pleas in the Circuit Court of the United States of America for the District of Illinois, on the Chancery side thereof, begun and held at the City of Chicago, in said District, before the Hon. Thomas Drummond, Judge of the District Court of the United States for the District of Illinois, and in the absence of the Hon. John McLean, one of the Justices of the Supreme Court of the United States for the Seventh Judicial Circuit, sole Judge *pro tempore* of said Circuit Court, on the third day of October, Anno Domini one thousand eight hundred and fifty-four, and of our independence the seventy-eighth year.

WM. POPE,
Clerk.

DISTRICT OF ILLINOIS, ss:

Be it remembered, that heretofore, to wit, on the 19 day of December, A. D. 1853, as yet of the said term of October, A. D. 1853, before the Hon. Thomas Drummond, Judge of said Court, at the Court-house aforesaid, came Alexander C. Davis, of Galena, in the county of Jo. Daviess, and State of Illinois, and a citizen of the State of Illinois, by Blackwell & Beckwith, his attorneys, and brings into said Court before the said Judge then and there, according to the rules of said Court, his certain bill of complaint against Richard D. Wood, John Yarrow, James Abbott & Josiah Bacon, partners under the name and style of Wood, Abbott & Co., of Philadelphia, in the State of Pennsylvania, and citizens of the State of Pennsylvania, Thomas Foster, Nicholas Stahl, E. R. Hooper, and John W. Campbell, of Galena, Illinois, in said District, and citizens of said State of Illinois; which said bill of complaint is in the words and figures as follows—that is to say:—

To the Hon'l Benjamin R. Sheldon, Judge of the 14th Judicial Circuit of Illinois, including the County of Jo. Daviess, in the State of Illinois, in Chancery:

To the Nov'r Term, 1853.

Your complainant, Alexander C. Davis, a citizen and resident of the County of Jo. Daviess and State of Illinois, would most respectfully represent unto your Honorable Court, that being engaged in

smelting, purchasing and shipping pig lead to the eastern markets, and being acquainted and having had business connection with a certain mercantile firm in Philadelphia by the name of Wood & Abbott, afterwards, about 1845, changed to the name and style of Wood, Abbott & Co., which said last firm was composed of Richard D. Wood, John Yarrow, James Abbott and Josiah Bacon, all of whom are prayed to be made defendants to this bill of complaint:

Your orator states, being so engaged in the smelting, purchasing and shipping pig lead, and finding it necessary to have some person in Philadelphia to whom he could ship lead, and have it sold for and on account of your orator, he made an arrangement, in the year eighteen hundred and forty-three, with the said Wood & Abbott, to consign *to consign* to them pig lead to be sold on commission, for and on account of your orator, by which arrangement it was agreed your orator was to ship to them pig lead, to be sold by them on commission at two and a half per cent. commission when the sale was made for cash, and when sales were made on time, or for time paper, it was agreed said Wood & Abbott should be allowed an additional amount of two and a half per cent. for guaranteeing the sales made on time, according to the usage of merchants in the trade.

Your orator states, under this arrangement he did ship to them from time to time, commencing in the year eighteen hundred and forty-three, and embracing the years, and running up to the year and including the year forty-seven, large quantities of pig lead, being in the whole (inclusive), an amount equal to about one hundred and ninety-three thousand seven hundred pigs, which was sold by said Wood, Abbott & Co. for and on account of your orator, under said arrangement above set forth.

Your orator states, in the year eighteen hundred and forty-seven the said Wood, Abbott & Co. being desirous of making an arrangement in which they would become jointly interested with your orator in the purchase and sale of pig lead, on the twenty-seventh day of February, eighteen hundred and forty-seven, your orator and the said Wood, Abbott & Co. entered into a written stipulation and agreement to purchase pig lead for the joint account of himself and the said Wood, Abbott & Co., which said bond or writing is in the words and figures of the copy hereto attached, which is hereby specially referred to, and made a part of this bill of complaint, and will be produced when necessary. By which said agreement it is stipulated your orator should purchase at Galena, Ill., for the joint account of himself and the said Wood, Abbott & Co., during said year (forty-seven), an amount of pig lead not exceeding sixty thousand pigs of good soft quality, for which your orator was to receive a commission of two and a half per cent. The lead was to be forwarded to said Wood, Abbott & Co. at reasonable freights and to be sold by them for the joint account of your orator and the said Wood, Abbott & Co., for which the said Wood, Abbott & Co. should be entitled to charge a commission of five per cent. upon the amount of sales for

selling and guaranteeing payment, or in other words the said Wood, Abbott & Co. were to receive two and a half per cent. for selling and two and a half per cent. for guaranteeing the payment when the sale was made on time; which said agreement further stipulated, in consideration of the advances made to your orator in cash and acceptances by said Wood, Abbott & Co., he agreed to ship to them during said year not less than 35,000 pigs of lead of his own smelting, to be sold on commission, for and on account of your orator as heretofore, to wit, at two and a half per cent. for selling and two and a half per cent. for guaranteeing, when the sale was made on time, or for time paper.

Your orator states, in pursuance of said arrangement he did consign to Wood, Abbott & Co. during the year forty-seven, eight and nine, large quantities of pig lead, amounting in all to about 93,448 pigs, which were sold by said Wood, Abbott & Co. for and on account of the said Wood, Abbott & Co. and your orator jointly, and under said agreement your orator did consign unto the said Wood, Abbott & Co. large quantities of pig lead during each of the years forty-seven, eight and nine, to be sold on commission by said Wood, Abbott & Co. for and on account of your orator, as heretofore, which said quantity we shipped during the years aforesaid, to be sold on account of your orator, amounted in all to about fifty-five thousand two hundred and sixty-six pigs; your orator states that from the year eighteen hundred and forty-three up to the time of entering into the written stipulation herein set forth, no full and just settlement and adjustment of the accounts had been made; and in forty-seven, when said written contract was entered into to purchase and consign lead on the joint account, no settlement was had between your orator and the said Wood, Abbott & Co., but that your orator continued to consign to them during the years forty-seven, eight and nine, large quantities of lead to be sold on their joint account, as well as on the individual account of your orator, on which said shipments of lead as aforesaid, your orator continued, and from time to time drew on said Wood, Abbott & Co., for various and large sums of money, both on the joint account as well as the individual account of your orator. Your orator states that during all this time, the said Wood, Abbott & Co. received large quantities of lead, on the joint and individual account of your orator, made advances of money, paid drafts on them drawn by your orator, and from time to time reported sales, but no full and final settlement was ever made, either of the individual or joint transactions. Your orator states that frequently he discovered small errors and inaccuracies in the accounts rendered, but supposed and intended when a final settlement should be made, to correct the same, your orator having no knowledge or expectation at the time of the errors, mistakes and overcharges, hereafter shown to your Honorable Court by the account herewith filed.

Your orator states that said business continued, and your orator

continued to ship lead to and draw drafts on the said Wood, Abbott & Co., until about the first of October, eighteen and forty-nine (1849), when, the said Wood, Abbott & Co. being in advance to your orator, and becoming (as they said) uneasy, fearing they might lose by your orator, about the latter part of October, eighteen hundred and forty-nine, John Yarrow, one of the defendants, came to Galena and represented the fears of their house that they might lose by your orator; and your orator not knowing the condition of accounts between them, but believing—*but believing* from the representations of said Yarrow, and the amount claimed, that he was indebted to them in a large amount for advances and acceptances, without knowing the overcharges, errors, mistakes and frauds that existed in the various accounts and transactions between them, but, supposing he was indebted in a large amount, and wishing and intending to secure and pay whatever amount was due on a full and fair settlement, at the instance and request of the said Yarrow, to fully secure and pay said Wood, Abbott & Co. all that might be due, and without any settlement between them, either of the joint account, or the individual account of your orator, but taking the arbitrary amount as claimed by Yarrow as the basis of the negotiation, without any settlement between them, but for the purpose of quieting there pretended fears, and to secure them in any amount that might be found due, your orator was induced and did execute the following bond, which is hereto annexed, and marked exhibit *D*, and prayed to be taken as part of this bill of complaint; which said bond was duly executed by your orator and George Fergurson, and delivered unto the said John Yarrow, for said Wood, Abbott & Co., and was then and there received; by which said bond your orator agreed, in the penal sum of fifty thousand dollars, conditional, that your orator would make and deliver unto the said Wood, Abbott & Co., deeds for the property and lands mentioned in said bond, in the month of January, A. D. 1850, with the further condition that your orator should obligate himself, on the delivery of said deeds, to repurchase the same property at the same prices allowed by the said Wood, Abbott & Co. in one, two, three and four years from the said date in said bond mentioned; and the said Wood, Abbott & Co. on their part agreed, in consideration of the premises, to credit the account of the said Davis, your orator herein, with the sum of twenty-nine thousand dollars.

Your orator states: At the times said bond was executed and delivered to said Yarrow for said Wood, Abbott & Co., there was no settlement or adjustment of the accounts between them, either of the individual or joint account; neither has there been any settlement of said accounts since, notwithstanding your orator has requested said Wood, Abbott & Co. on more than one occasion, by letter and otherwise, to come or send some one that was fully authorized to settle up and adjust said accounts, which request has been utterly neglected, and no settlement or adjustment of said accounts has ever been made, but the same remains open and unadjusted to this day, by full and just settlement.

Your orator states that in pursuance to the condition of said bond, he made and executed the deeds for the property therein mentioned, a copy of which said deeds are hereto attached and marked "*E*," and prayed to be taken as part of this bill of complaint, and at the same time, for the purpose of more effectually carrying out all the provisions of said bond and security, and upon closing said property back from said Wood, Abbott & Co. at the same prices the same had been taken by them, your orator executed his four promissory notes for six thousand dollars each, with interest from date, payable to the said Wood, Abbott & Co., in one, two, three and four years from the date of said bond, and endorsed and assigned to said Wood, Abbott & Co. their promissory note, drawn by Dennis and Mathew Murphey, dated on the 13th of December, A. D. 1849, the first due and payable in six months from date, for the sum of sixteen hundred and sixty-seven dollars (being the amount of the first of said notes), and one at twelve months for the sum of sixteen hundred and sixty-six dollars (being the amount of the second note), and one for sixteen hundred and sixty-seven dollars, being at two years, amounting in all together to the sum of five thousand dollars, which, together with your orator's four promissory notes for six thousand dollars each, as above set forth, and the deeds herein mentioned, were all transmitted to the said Wood, Abbott & Co. at Philadelphia, by the hands of George Ferguson, with a special letter of instructions and an account of the errors and overcharges in their accounts as far as the same had been noted; but a full and particular account of such errors and overcharges your orator was not then informed of, and had no knowledge as to the extent of the errors, overcharges and frauds that had been practised upon him in the premises.

Your orator states: Said Fergurson did deliver unto the said Wood, Abbott & Co. the deeds for said property, and the notes herein set forth, about the 11th or 12th of February, A. D. 1850, and took up and cancelled said bond; but that said Wood, Abbott & Co. did not and would not comply with the understanding agreed upon between said Yarrow and your orator; that on receiving said deeds and the promissory notes for the repurchase of said lands so sold, that they, the said Wood, Abbott & Co. would make and deliver unto your orator a good and sufficient title bond to reconvey said lands and property so sold, as fast as said notes should be paid; but notwithstanding said agreement and your orator's rights in the premises, the said Wood, Abbott & Co. did receive, accept and retain said deeds, notes and account of errors and overcharges, so sent by said Ferguson, and refused and neglected to make a good and sufficient title bond to convey said land and property; but in the place and stead of said bond made, executed and delivered unto the said Fergurson two certain receipts which are hereto attached, and a paper purporting to be a bond, which is also hereto attached and marked *G* and *H*, and prayed to be taken as part of this bill of complaint.

Your orator states: Said Fergurson violated his instructions in

delivering said notes without receiving a proper bond, and in not delivering the letter of instructions, with the account of errors, overcharges and mistakes in said accounts, which was retained by said Fergurson, and returned to your orator at Galena, and then transmitted by mail to them by said Fergurson from Galena; copies of which said letters, hereby referred to, will be produced and referred to when necessary.

Your orator states that said account of errors, overcharges and mistakes, as sent by said Fergurson, was incomplete, and did not embrace all or even a large share of said errors, overcharges and mistakes, and was offered by your orator as a compromise and settlement, but the same was rejected by said Wood, Abbott & Co., and afterwards withdrawn by your orator; but that said Wood, Abbott & Co. did make out and deliver to said Fergurson after the receipt of said deeds and notes aforesaid, an account, as claimed by them, of the said transactions, which account was delivered to your orator by said Fergurson, and on an examination of said account and finding said Wood, Abbott & Co. persisted in their illegal, erroneous and improper charges, and on a further examination and information in regard to the manner in which the said Wood, Abbott & Co. had conducted the transactions, and the fraudulent and false account of sales as reported by them from time to time, your orator was induced to and did enter into a full and more satisfactory examination of said accounts, and has made out and herewith annexed and filed an account of errors, overcharges, false and fraudulent charges, improper and illegal charges, all of which will more fully and at large appear by reference to said accounts which are hereby annexed and made part of this bill of complaint; by which said accounts it will be seen said errors, overcharges, false and fraudulent charges, improper and illegal charges, amount in the individual account of your orator with said Wood, Abbott & Co. to more than nineteen thousand dollars, and in the joint account to seven thousand and ninety-two $\frac{74}{100}$ dollars, making together the sum of more than twenty-six thousand dollars already discovered; and your orator is induced to believe and does believe there are other errors, overcharges, false and fraudulent charges, improper and illegal charges that may yet be discovered, and he hereby claims the benefit of the same when discovered, as fully as if the same were here inserted.

Your orator states that the three said promissory notes drawn by said Dennis and Mathew Murphey in favor of your orator, and endorsed by your orator and delivered by Fergurson to Wood, Abbott & Co., for the sum of five thousand dollars, as herein set forth, have been fully paid and satisfied unto the said Wood, Abbott & Co., and that the three first notes executed to the said Wood, Abbott & Co., for six thousand dollars each, and delivered by said Fergurson to them as herein stated, have been fully paid and satisfied to the said Wood, Abbott & Co., with the interest and exchange, and that said Wood, Abbott & Co. have re-deeded and transferred back to

your orator all of said land and property in said deeds mentioned and contained, with the exception of the north half of lot number six (6) west side of Beach street, fronting twenty-five (25) on Beach street, and running back two hundred and seventeen feet eight inches; also the undivided five-sixths (⅚) part of a lot containing seventy-eight feet on Water street, and extending to Commerce street, and fronting sixty-one (61) feet on Commerce street, which lot is a part of diagonal lot number seventy-three (73), all being in the city of Galena, county of Jo. Daviess, and State of Illinois.

Your orator states said last note, to wit, the note drawn by your orator in favor of said Wood, Abbott & Co., on the 24th day of October, A. D. 1849, for six thousand dollars, and due and payable in four years from the date thereof, has not been paid, neither has the said Wood, Abbott & Co. executed and delivered a deed for the remaining lands and property as herein set forth, but your orator is informed and believes, and so states the facts to be, that the said Wood, Abbott & Co. have made and executed a deed for the lands last mentioned, and *and* sent said deed, with the last mentioned note of your orator for six thousand dollars, to Thomas Foster and Nicholas Stohl, with directions, as your orator is informed and believes, to said Foster and Stahl, to deliver said deed to your orator when said note is paid; and that said note has been protested for non payment, and that said Foster and Stahl now hold said note and said deedas the agents of said Wood, Abbott & Co., and that they or either of them have no other or different interest in said note or deed than to receive payment of said note, and deliver over said deed as agents of said Wood, Abbott & Co., (and that said Foster and Stahl have delivered over said note since the drawing of this bill and notice to them, unto E. R. Hooper and John W. Campbell as attorneys of Wood, Abbott & Co. for collection, and that said Hooper and Campbell have no other or different interest in the same, and are prayed to be made defendants.

And that said Wood, Abbott & Co. are now largely indebted to your orator, on a fair settlement, more than said note, and the same is entirely without consideration. Your orator states, at the time of executing said bond to make deeds as herein set forth, and at the time of the making and delivering said deeds and the promissory notes herein mentioned and set forth, there was very little, if anything, due the said Wood, Abbott & Co. on a full, fair and just settlement of all the accounts and business transactions between them and your orator; but your orator states the facts to be, without any settlement of accounts between them, and without a knowledge of the true situation of the indebtedness between them, and with the understanding and agreement, on the part of said Yarrow, that on a full and final settlement between them that all just credits should be allowed; and at that time, believing he was indebted to them in said amount, and not knowing the extent of the errors, inaccuracies, false and fraudulent charges, and illegal, improper and overcharges and other facts

that have come to his knowledge since, in the practices of *of* said Wood, Abbott & Co. in selling lead for cash and reporting the same as sold on time and charging a guarantee therein.

Your orator states and so charges the facts to be, that said note so holden by said Foster & Stahl was entered into without any consideration whatever, and that said so held by them should be delivered up to your orator, and that said notes should be surrendered, annulled, held void and of no effect.

Your orator states and so charges the facts to be, that commencing on the 31st July, A. D. 1843, and running through the whole time mentioned, the said Wood, Abbott & Co. were in the habit of making false and fraudulent and erroneous charges; in charging sales (in some instances) as made that in fact were not made at the time; in charging a guarantee commission when sales were made for cash; in overcharging a guarantee commission when sales were made at 20, 30 and sixty days; in charging interest on interest in making up and rendering an account to your orator; in selling lead to arrive, contrary to instructions, and at a less price than the actual cash value of said lead in market when the same would arrive; in making sales on time and charging interest on the same, and commission and guarantee on the interest; in charging interest on balances of interest; in charging a commission and guarantee on sales of lead, and brokerage on the same lead, all of which said actings and doing are contrary to equity, the usages of merchants, and in violation of the rights of your orator in the premises.

And your orator states and so charges the facts to be, that no statement of the business transactions between them has ever been made, either on the individual or joint account, and at the time of entering into the bond herein mentioned and set forth, and at the time of making the notes herein set forth and mentioned. That on a full, fair and just accounting and settling, very little was in fact due said Wood, Abbott & Co., and that they well knew the fact that no such amount, or any large amount was in fact and truth due them; but with a knowledge of the accounts, of errors and overcharges, false and fraudulent charges that had been made against your orator, and with the intent and design, on their part, without any settlement of accounts, to get the advantage of your orator and force him to pay large sums of money, they assumed the amount as being due arbitrarily, and then pretended they had fears of losing so large a debt and wished to have the same secured, and on a full settlement the same was to be fully and fairly adjusted, all of which actings and doings and pretences and dealings on the part of the said Wood, Abbott & Co. was done with the design and intention, on their part, to cover up their fraudulent practices, and get the advantage of your orator in the premises.

To the end, therefore, that full and complete justice may be done and your orator may be protected in his just rights in the premises, as he is entirely remediless by the rules of common law, and can only

have redress in a Court of Equity, and that an account may be taken of all the dealings and transactions between them, and that the said Wood, Abbott & Co. may be required to furnish a full and true account of all such sales and guarantees (of lead sold by them) both on the joint and individual account of your orator; and that they be required to fully and truly set forth and show to what person or persons said lead was sold, and the name or names of such person or persons, when sold, at what price, and whether the same was sold for cash or on a credit, and if on a credit what credit, and if sales were made of lead to arrive, when, what amount, and to whom, and at what price, and what was said lead worth when the same did arrive; and that they and each of them may be required to answer fully and particularly, item by item, all the matters and things set forth in this bill, as fully and particularly as if the same were here repeated and they and each of them specially interrogated thereto, the answer of said defendants under oath being hereby expressly waived in pursuance to the statute in such cases made and provided.

Your orator therefore prays that a summons in Chancery may issue against the said defendants, and that they may be required, on a day to be named therein, to appear before your Hon'l Court, and answer the premises; and that an account may be taken and stated between your orator and the said Wood, Abbott & Co., and on such accounting that your Hon. Court will order and decree that said note in the hands of said E. R. Hooper and John W. Campbell be surrendered up to be cancelled and held void and of no effect, and that said deed so held by said Foster & Stohl be surrendered and delivered up to your orator, and that a writ of injunction be issued against the said Thomas Foster and Nicholas Stohl, and said E. R. Hooper and John W. Campbell, restraining and enjoining them, and each of them, from returning, surrendering or delivering back to the said Wood, Abbott & Co., or to any person for them, said note and deed aforesaid, but to hold and produce the same in this Hon'l Court, to be disposed of as your Honor may order and direct; and on the final hearing of said cause, that your Honor may order, decree, that the said Wood, Abbott & Co. pay to your orator such sum or sums as may be found due on a full and fair settlement between them, and that the said defendants, Wood, Abbott & Co., may be enjoined and restrained from molesting, selling, or in any way disposing of said property, or in anywise suing or collecting said note; and for such other and general relief in the premises as is consistent with Courts of Equity and the particular nature of his case.

As in duty bound, shall ever pray, &c.

ALEX. C. DAVIS.

DOUGLAS,
JOHNSON,
and McCLELLAND,
Sol'rs.

STATE OF ILLINOIS,
Jo. Daviess County, ss:

I, Alex. C. Davis, being duly sworn according to law, make oath and state that *that* the facts set forth in the above bill by me subscribed as stated on my own knowledge are true, and those facts charged on information and belief I believe to be true, and further saith not.

ALEX. C. DAVIS.

Subscribed and sworn to before me this the 7th day of Nov., 1853.

HENRY C. PARK,
J. P.

STATE OF ILLINOIS,
Jo. Daviess County, ss:

Alex. C. Davis being duly sworn, makes oath and states, that Richard D. Wood, John Yarrow, James Abbott and Josiah Bacon, the above named defendants, under the name and style of Wood, Abbott & Co., are now residents of the State of Illinois, and further saith not.

ALEX. C. DAVIS.

Subscribed and sworn to before me this 7th day Nov., 1853.

HENRY C. PARK,
J. P.

Be it remembered, that afterwards, to wit, on the said 19th day of December, A. D. one thousand eight hundred and fifty-three, the said defendants, Richard D. Wood, John Yarrow, James Abbott and Josiah Bacon, copartners, under the firm of Wood, Abbott & Co., residents of the City of Philadelphia, and citizens of the State of Pennsylvania, by E. R. Hooper, Messrs. Arnold, Larned & Say, bring into Court their answer to said bill, which said answer follows in these words—that is to say:—

ALEXANDER C. DAVIS, a resident of the county of Jo. Daviess, in the State of Illinois, and a citizen of said State,

v.

RICHARD D. WOOD, JOHN YARROW, JAMES ABBOTT and JOSIAH BACON, (copartners under the firm of Wood, Abbott & Company), residents of the City of Philadelphia, and *and* all citizens of the State of Pennsylvania.

The joint and several answers and pleas of Richard D. Wood, John Yarrow, James Abbott and Josiah Bacon, copartners under the firm of Wood, Abbott & Company, residents of the City of Philadelphia, and all citizens of the State of Pennsylvania, to the bill of complaint of Alexander C. Davis, a resident of the county of Jo. Daviess, in the State of Illinois, and a citizen of said State.

These respondents, without waiver of the pleas hereinafter pleaded, or of any matter of exception to the insufficiencies in form and substance of the complainant's bill, for answer thereto, or to so much thereof as they are advised it is material or necessary for them to answer, answering say: That from the year 1838 to and inclusive of the year 1844, the firm of Wood and Abbott consisted of Richard D. Wood, Horatio C. Wood, John Yarrow, James Abbott and Josiah Bacon, all residents of the City of Philadelphia, and citizens of the State of Pennsylvania, and that at the expiration of said year, 1844, the firm of Wood & Abbott was dissolved, and the said Richard D. Wood, John Yarrow, James Abbott and Josiah Bacon, all residents of the said city of Philadelphia in the State of Pennsylvania, respondents herein named, entered into a new firm and partnership, under the style of Wood, Abbott & Co., in and for the same business, and so continued during all the period in the bill referred to; that the said firm of Wood, Abbott & Company purchased the stock of merchandise of the said their late firm of Wood & Abbott, and the accounts with said complainant were transferred to and continued by the said firm of Wood, Abbott & Company.

And these respondents in this their answer, pray that they may be regarded as answering without further discrimination to the charges in complainant's said bill, for the periods respectively which they were severally members of said firms of Wood & Abbott, and Wood, Abbott & Company.

That the business transactions of the said firm of Wood & Abbott with the complainant commenced in the year 1838, in the sale by them to him of merchandise in the said year; that the chief business of the said firm consisted in the sale of dry goods in the city of Philadelphia, and that from the year last mentioned up to, on or about the twentieth day of January, A. D. 1849, the complainant purchased goods from the said firm of Wood & Abbott, and from the said firm of Wood, Abbott & Company; that the said purchases were made by the complainant from time to time to such extent as he desired, and upon long credits, freely given him; that he made payments from time to time on account of such merchandise.

That the account of such sales and credits and the balance due was and is and were separate and distinct from their dealings with him, either in respect to lead consigned to them, or the purchase of lead by them on joint account, to which reference is made by the complainant in his bill, although for convenience of the making and tendering the accounts, the balances were carried into the accounts of other transactions or dealings between them.

That they annex as an exhibit to this answer, marked "*A*," a true copy of the said merchandise account of the said complainant, and of the balance due by him since the date of its last settlement in full, and which account they pray may be regarded as part of this their answer.

And these respondents, further answering, say: That their business

dealings with the complainant were in respect of the purchase by them, severally or jointly, in the receipt by them as the consignees of lead, commenced towards the close of the year 1841. One of these respondents, Richard D. Wood, on the fourteenth day of December of 1841, addressed the complainant by a letter, requesting him to purchase for his, their firm, lead to the extent of five thousand dollars, or to purchase on joint account (the complainant one-half, and the then firm of Wood & Abbott the other half) lead to the extent of ten thousand dollars; that the complainant accepted the latter proposition, and in a short time drew upon the firm of Wood & Abbott to the amount of six thousand dollars, which was duly paid. The complainant, however, did not purchase the said lead, and although the said draft had long before been paid, in the month of March, 1842, he acknowledged himself as holding for the respondents three thousand nine hundred and seventy-seven dollars twelve cents, chiefly in Illinois bank notes. That insomuch as the said notes had depreciated from ten to twenty per cent. in market value after he drew the drafts, the then firm of Wood & Abbott refused to accept the said notes; that after much correspondence, and then believing that no fraud or indirection was intended by the complainant, the difference was compromised and adjusted by his paying one thousand dollars in good paper, and by the said firm receiving his note at five years without interest for the balance due, viz: two thousand eight and seventy-eight dollars and sixty-six cents; that the said note so given was paid, but as the same was the commencement of the dealings between the parties, enters into and forms part of the account referred to in the complainant's bill, and therefore enters into the balance now claimed as due by these respondents.

And the respondents further answering say: That in the month of October, 1842, the then firm of Wood & Abbott did give an order to the complainant to purchase for their account four thousand pigs of lead, and authorized him to draw for the amount purchased when the invoice for the same was forwarded, and not before. That this transaction was closed and adjusted without difficulty, except so far as the then firm of Wood & Abbott were compelled to repress the complainant in his disposition to draw for more than the authorized amounts. That in the month of December, 1842, the complainant applied to the then firm of Wood & Abbott to make some arrangement with him for the purchase of lead to be delivered during the ensuing spring, and desiring that they would accept short drafts drawn by him upon them for such lead as he might purchase from time to time, the bills of lading and the lead so purchased to be forwarded at the earliest moment at which it could be shipped; the said firm of Wood & Abbott had during the previous dealings hereinbefore referred to, constantly refused to accept any bills unless the same were accompanied by a bill of lading for the lead, but having then entire confidence in the integrity of said complainant, and believing that he would in all respects comply with his agreements, they did in the

month of February, 1843, authorize him to draw his drafts upon them for such sums as he might require from time to time for the purchase of lead, in all not exceeding three thousand dollars; that shortly after this permission was given the complainant commenced drawing in such manner and in such sums as suited his convenience, which drafts were duly accepted and paid by the said then firm. That during the said year the said complainant consigned to the then firm lead to the amount of about twenty-five thousand dollars, to be sold by them for him on commission, the proceeds to be applied to the payment of such commission and necessary expenses, and of the acceptances so made at his request and for his account, and the surplus to be paid over to him. That from time to time during the said year and during all the subsequent years of their dealings as hereinafter stated, brief accounts of the sales as they were made were rendered to the complainant; that at the termination of the said year 1843, a full account current of his dealings with them during the said period was duly tendered to him; that said account was received, examined, retained and assented to by him, and that no objection of any kind was ever made thereto, from the year when it was so rendered until the filing of the bill in this cause.

And these respondents further answering say: That they annex hereto as an exhibit to their answer, marked "*B*," a true copy of the said account, which they pray may be regarded as here set forth at large, and the same having been so transmitted, retained, assented to, and acquiesced in for so long a period, and they having in this their answer, denied all fraud, and every pretence thereof, they claim that the said account, as to each and every item thereof, shall be held and regarded as one duly settled, and stated and agreed upon as to each and every item thereof between merchant and merchant, and that they may have the same benefit thereof as though the same had been by them pleaded. And further, that inasmuch as these respondents have in this their answer denied all fraud, and every pretence thereof, and insomuch as more than nine years elapsed after the rendition, acceptance of, and acquiescence in the said account by the said complainant before the filing of the bill in this cause, they pray the same benefit thereof as though the said lapse of time had been by them duly pleaded; that in and by the said account so acquiesced in and assented to, and sanctioned and adopted in subsequent accounts as hereinafter stated, the said complainant was charged five per cent. commission on all the sales made by the said then firm for him, including all that were cash sales, and also those tendered as nett sales (hereinafter fully explained), as well as those appearing on the face of the account to be sales on time, as by said accounts will fully appear. That during the year 1843, there was lost on the Mississippi river, certain lead belonging to the complainant, which the said then firm had insured for him; the amount insured was paid to their firm by the Insurance Company, and in the account as will thereby appear, the then firm

charged a commission thereon, for attending to that transaction, of 2½ per cent.; the sale had not been made by them, and the charge was for their services in that respect, and which item in the account, but for this explanation might be unintelligible, but which the said complainant, understanding said account, and every item thereof, received, assented to, and acquiesced in as hereinbefore stated.

And these respondents further answering say: That they were largely in advance in cash, or credit (by their acceptances as above stated) for the complainant during the said year. And they further answering say, that neither the said late firm of Wood & Abbott, nor the firm of Wood, Abbott and Company, nor these respondents individually, did ever, directly or indirectly, agree to or with the complainant or any body for him, to charge him a commission of 2½ per cent. for cash sales, and 2½ per cent. for guaranteeing sales on time, and that upon the contrary, their charge for the service rendered to the complainant in accepting his dafts, and making the sales, whether for cash or on credit, was five per cent., which he the complainant well knew by conversations had between them, as well as by the said account so rendered him herein before next referred to.

And these respondents further answering say: That if upon any occasion a charge of 2½ per cent. only for a sale was made, of which there may be some in the accounts current for so many years, such reduction was their voluntary act, the result of some particular circumstance connected with the transaction, which in their judgment made it proper so to do, as an act of favor to their consignor, and not by virtue of any contract, express or implied, in relation thereto. That the complainant in his said bill, by virtue of his erroneous statement in that behalf, claims at the expiration of more than nine years, a credit for the sum of about twenty-four dollars as improperly by the said account debited to him as an overcharge in items of commission and interest; so far as respects the portion thereof relating to commissions these respondents have hereby, as they are advised, fully answered the same, and so far as the same respects the item of interest, these respondents will hereafter fully reply thereto.

And these respondents further answering say: That during the year 1844, the dealings between the said firm and the complainant continued chiefly by consignments of lead made by him for sale, and a small amount purchased by him on account of the said firm. That at the close of the said year, there was a balance due by the complainant to the respondents, of seven thousand nine hundred and fifty-four dollars; that from time to time during the said year, brief accounts of the sales as they were made, were rendered to the complainant, which these respondents crave leave to produce; that at the termination thereof a full account current of his dealings with them, during the said period, was duly tendered to him, and that the said account was received, examined, kept, and acquiesced in by him, and no objection of any kind was ever made thereto, from the year

when it was so rendered, until the day of the filing of the bill in this cause.

And these respondents, further answering say: That they annex hereto as an exhibit to this answer, marked "*C*," a true copy of the said account, and pray that the same may be regarded as here set forth at large, and the same having been so transmitted, received, assented to, and acquiesced in, and they having, in this their answer, denied all fraud and every pretence thereof, claim every benefit in respect to the same and every item thereof, both as to debt and interest, as a settled account between merchants, and with reference to the lapse of time before any objection was made thereto, and before the filing of the bill in this cause, as though the same were, if needful, duly and formally pleaded.

That by the said account, as will thereby appear, commissions were charged at the rate of five per cent., and the same was made up with interest upon the balance, as is therein stated, and which last mentioned mode of calculating interest became and was the manner and uniform custom of their dealings together in reference thereto, well understood and known to the complainant, with the exception hereinafter stated, with reference to quarterly accounts.

And these respondents, further answering, say: That it does not now appear by the bill of complainant, or the exhibits thereto attached, that the accounts rendered to him in the year 1844, so containing charges of commissions and interest, form any subject of complaint.

And these respondents, further answering say: That at the close of the year 1844, the said firm was changed from Wood & Abbott to Wood, Abbott and Company, and the business continued as hereinbefore stated. That the business transactions continued during the year 1845, between the said parties, the complainant desiring them from time to time to contract for the sale and delivery on his account, not then actually received by the respondents but to arrive, and the same course had heretofore been urged by him. That the transactions of the year were large, amounting to about one hundred and forty thousand dollars, and were conducted substantially in the same way by drafts by complainant upon the respondents, the payment of which was to be provided for by the proceeds of land. That the respondents were constantly in advance to him, without property or proceeds to secure it, during the said year from forty to fifty thousand dollars, but the complainant constantly and continually promised to keep them entirely secured by shipments of lead, which would arrive before the end of the year, and continued to urge them to contract for the sale and delivery of lead to arrive, as hereinbefore explained. That so far from performing his promise and undertaking, there was at the close of the said year a balance due by him to the respondents (principal and interest), and wholly unsecured by property in their possession, the sum of nineteen thousand six hundred and six dollars and sixty-four cents or thereabouts.

That at the expiration of the said year, they rendered to the complainant an account current of the business of the said year, containing a full account of his dealings for said period, and that the said account contained a charge of five per cent. for commissions, and that the same was made up with interest upon the balance, as therein stated. That the said item of interest carried with it the balance of the previous year.

That your respondents annex as an exhibit to this answer, marked "*D*," a copy of the said account current rendered at the termination of the said year, which they crave may be regarded as here set forth at large, and that the said account was received, and examined, and understood by the complainant, and the balance thereof was in this, as in each of the yearly and quarterly accounts hereinbefore and hereinafter referred to, specially stated, carried forward to the next account, as hereinafter mentioned; and in respect to any alleged errors or overcharges therein, these respondents, having denied all fraud or pretence thereof, claim the benefit of the lapse of time before the filing of the bill in this cause, as the same was duly and formally pleaded.

And these respondents, further answering say: That the said mode and manner of calculating the interest was made as thereby appears, and was known, and examined by, and acquiesced in, and sanctioned by the complainant, and that no objection was ever made thereto until the day of the filing of the bill in this cause; and that from time to time the aggregate of principal and interest due on the previous accounts was carried to the new one, and which cause continued during the whole of the dealings between the parties hereinbefore and hereinafter mentioned, and became and was the manner and practice of dealing and contract between them with reference thereto.

And that the complainant, notwithstanding the said settlement, lapse of time, and acquiescence, now charges that there was an error in the said accounts of 1845, to the extent of one thousand three hundred and twenty-eight dollars sixty-eight cents, as interest on interest, and seventy-one dollars seventy-seven cents, as alleged improper charge of commissions.

And these respondents further answering say: That it was understood between the complainant and themselves, towards the close of the year 1845, that the business should be continued between them during the year 1846, and that the complainant might draw his drafts upon them, but not to a greater extent than theretofore, for lead to be purchased and to be shipped and forwarded to them on the opening of the navigation in the spring of 1846; that during the periods hereinbefore and hereinafter referred to, the monetary condition of the country was such that at the time of the payment by them of most of the drafts of the complainant, money was worth at the city of Philadelphia, and could have been safely and lawfully invested at a far higher rate of interest than six per cent., and upon many occasions could with difficulty be procured by business men at any rate; and that these respondents, by reason of the heavy advances which

they made from time to time as hereinbefore and hereinafter stated to the complainant upon the faith of his sending property not then actually received, shared in common with others in these difficulties; and in the month of October 1845, they did inform the complainant, that thereafter they should have his accounts made up quarterly, so long as they continued to transact business with him, and to which notice and mode of adjusting their future accounts, the complainant did not at that time, nor until as is hereinafter stated, make any objection; that in the month of January, 1846, the respondents did again call the attention of the complainant to the state of his account, which had increased within the month from $19,606 64 to over $26,000, and informed him that they would accept no more drafts at less than sixty days; that money continued very scarce and business men were required to use the utmost caution in their affairs to avoid embarrassment if not ruin; that the said complainant, disregarding this information, continued to draw at shorter dates to suit his convenience, and he was, towards the close of the month of February, informed that he had disregarded their instruction and request but that they would for his honor protect the drafts already drawn, but that for all such drafts drawn after the first day of February, and paid by them at shorter time than sixty days, they would charge to him one per cent. in addition to their former charge, and if he should himself sell lead purchased by their credit by such drafts, and before putting them in funds for such advances, they should charge him a commission of two and a half per cent. upon the amount of said sales, and to which course the said complainant made no objection; that although the complainant did make sales of the lead so purchased by him, yet they never did charge him the said commission except upon a small quantity sold in New Orleans, and although they did charge the said additional sum of one per cent. for short drafts which were drawn, as by said accounts will appear, to large amounts, yet that charge was afterwards and as hereinafter stated with other matters connected with said accounts, the subject of adadjustment and compromise, and upon such settlement a portion thereof was deducted; that in pursuance of the said notification and arrangement with reference to quarterly accounts, the respondents did in the month of April, 1846, transmit to the said complainant his account for the first quarter of said year, at which time they were in advance to him, without any property in hand to secure the same, over $51,000; and these respondents hereto annex a copy of the said account as an exhibit to this answer, marked "*G*," which they pray may be regarded as herein set forth at large, and that the said account so containing charges of interest and commissions as will thereby appear, was received, examined and acquiesced in by the complainant without objection of any kind thereto; nor was any objection ever made to any of the items thereof, or any claim presented by reason of any supposed error therein, until on or about the day of the filing of the bill in this cause; and the said account having been so transmitted, received and acquiesced in, and having been

made up in pursuance of said previous notice, and these respondents having denied all fraud and every pretence thereof, claim every benefit in respect thereto, both as to debt and interest, and every item thereof, as a settled account between merchants, and with reference to the lapse of time before the filing of the bill in this case, as though the same were, if needful, duly and formally pleaded.

And these respondents further answering say: That in the month of July, in pursuance of said notification and arrangement, they did transmit to the complainant his account for the said quarter of the said year, and there was then a balance to them by the complainant of $40,480 22; and these respondents hereto annex a copy of the said account as an exhibit to this answer, marked "*F*," which they pray may be regarded as herein set forth at large, and that the said account so containing charges of interest and commissions, as will thereby appear, was received, examined and acquiesced by the complainant without any objection thereto; nor was there any objection ever made to any of the items thereof, or any claim presented by reason of any supposed error therein, until on or about the day of the filing of the bill in this cause; and these respondents claim the same benefit with respect to the said accounts so transmitted, received and acquiesced in, and with reference to the lapse of time before the filing of the bill in this cause, as is hereinbefore claimed and pleaded with respect to the accounts of the first quarter of said year, and as though here re-stated at large.

And these respondents further answering say: That from time to time during the course of the business transactions hereinbefore mentioned, the said complainant had repeatedly requested them to sell lead shipped by him in advance of its arrival, and in the month of August, 1846, these respondents sold for the complainant 5,823 pigs of lead at $3 50, at sixty days' credit, of which he was promptly advised. That at the time such sale was made, they acted under the general instruction of the complainant to make sales and dispose of his property given both before and afterwards, as they would do of their own, and in the exercise of their best judgments for his interests; and that the said sale was made for the best price that could reasonably be obtained for the same, by the exercise of every care and diligence by the respondents at a rate which would yield a profit at a time when they were largely in advance to the complainant, and before receipt of any particular instructions from *from* him not to sell the same; that after the said sale had been made, they did receive information that he desired the said lead not to be sold, but the said complainant did subsequently express his regret that such particular instruction had not been received by the respondents until after said sale, which was the fact, and complaining that the price was lower than that in the city of New York, stating the latter to be $3 56, being but six cents more than the price at which it was sold in Philadelphia, although in his said bill he claims a difference of seventy-five cents per one hundred pounds, and falsely states the

same to have been sold to arrive at the rate of seventy-five cents per one hundred pounds less than the respondents were authorized by his instructions to sell; the truth being, that the said lead was sold for the highest and best price that could be obtained therefor, and was sold before any instructions were received, limiting the price thereof, or desiring it not to be sold, or in any manner affecting the general directions, given either with reference to sales to arrive, or to the exercise of their discretion.

And these respondents further aver: That being so, as by the said accounts will appear, in advance to the said complainant, they were as they humbly submit, entitled to sell the said property, as well as that hereinafter referred to and made subject to objection on the same ground to receive such advance at the best market prices which, with due diligence, they could obtain therefor; and that the said complainant never did until the day of the filing of the bill in this cause, allege or pretend that the respondents were liable for any loss thereby, although the sale entered into and formed part of the accounts so from time to time rendered, received, examined, received and acquiesced in as hereinafter stated; and they do deny, that by any act or thing done by them, or omitted to be done in respect thereto, they are or can be in any manner liable to him, and that the amount so unjustly attempted to be claimed by the complainant from them in his said bill, amounts to the sum of 3,049 60, and insomuch as more than six years elapsed since the said claim, if any, arose before the filing of this bill, and since all the facts in reference thereto were known to the complainant, the respondents claim all the benefit to which they are entitled in equity by reason of the said lapse of time, as tho' the same, if needful, had been formally pleaded.

And these respondents further answering say: That the complainant by his said bill unjustly seeks to charge, as is thereby understood, the sum of fifty cents per one hundred pounds upon 1,304 pigs of lead, sold by the respondents at *at* $3 75 per one hundred pounds as so sold contrary to instructions, and at that rate below the true value thereof, which said item amounts to $438; the truth in relation thereto being that the same was sold in good faith, at a full and fair price, after the exercise of every diligence by the respondents, and at a time when the price of the said article in New York was, when the sale next hereinbefore referred to was made, $3 50 per one hundred pounds, there being in fact twenty-five cents more per one hundred pounds procured for the complainant, than the same article was realizing in the New York market. And these respondents deny that said sale was made in violation of any instructions, or that they had any other instructions in respect thereto, than that they should exercise their best judgment and discretion, which they did in good faith, and at a time when they were largely in advance to him; and they deny all liability in respect thereto to the complainant, and aver that more than six years elapsed since

the said liability, if any exist, arose before the bringing of this bill, and they claim the benefit of the said lapse of time, as hereinbefore stated. And these respondents aver, that the said sale formed an item in the accounts so rendered, examined, acquiesced in and adjusted, and they claim the like benefit thereof, as is hereinbefore craved.

And these respondents further answering say: That the said complainant in his said bill further claims as an error and overcharge, occurring in the year 1846, the sum of $82 58, and the sum of $133 01, being *being* two and a half per cent. upon certain sales therein mentioned; that even if these respondents were entitled only to a commission of five per cent. upon time sales, which is denied, yet nevertheless, the said two sales in the bill referred to in respect to this charge, were in fact sales on credit, at six months, and as such even by the complainant's own *own* showing they were entitled to the commission of five per cent., one-half of which is now untruly alleged to be overcharged; that the said complainant in his said bill for and in respect to the business of the year 1846, does further claim from the respondents the sum of $322 52 as the alleged difference in price between 1865 pigs of lead, as sold contrary to his instructions, and the alleged actual value thereof; whereas in truth the same was not sold contrary to his instructions, nor was there any such alleged difference in price, but the same was sold after due diligence and in good faith, and at a time when the respondents were largely in advance to him, at a price twenty-five cents per one hundred pounds more than the price of the same article, at the same time, in the city of New York, and that no claim in respect thereto was made by the complainant, and that more than six years elapsed after the said alleged demand arose, and after he had full knowledge of all the facts in respect thereto, before the filing of the bill in this cause; and they claim the benefit of the said lapse of time, as though formally presented, and the said item, *and the said item* in like manner formed part of the accounts so transmitted, received, and assented to, and they claim the like benefit thereof as is hereinbefore craved.

And these respondents further answering say: That the complainant in his said bill, for and in respect to the business transacted in the year 1846, and in the month of October thereof, claims of the respondents two sums, amounting together to the sum of $2,254 63, as differences in price between 9,131 pigs of lead, as sold contrary to his instructions, and the alleged actual value thereof; whereas, in truth, the same was not sold contrary to his instructions, nor was there any such alleged difference in the price, but the same was sold after due diligence and in good faith, at a time when the respondents were largely in advance to him; that for more than six years after the said alleged demand arose, and after he had full knowledge of all the facts in respect thereto, and they claim the benefit of the said lapse of time as though formally presented; and the said sale in like

manner, formed portion of the accounts so received, examined, and assented to, and they claim the like benefit thereof, as hereinbefore craved.

And these respondents further answering say: That in the month of October, 1846, in pursuance of said notification and arrangement hereinbefore stated, they did transmit to the complainant his account for the third quarter of the said year, and there was then a balance due to them of $61,204 22. And these respondents hereto annex a copy of the said account, marked "*G*," and that the said account so containing the sales so made, and the charges of interest and commissions as will thereby appear, was transmitted, received and examined by the complainant, and no objection was then or thereafter made by him in respect to any of the items thereof, nor any claim *nor any claim* presented, by reason of any supposed error therein, until the day of the filing of the bill in this cause, and these respondents claim the same benefit with respect to the said account so transmitted, received and acquiesced in, and with reference to the lapse of time before the filing of the bill in this cause in respect thereto, as is hereinbefore claimed and pleaded, with respect to the account of the first quarter of said year, as though here restated at large.

And these respondents further answering say: That many sales in their said accounts are rendered as cash or nett sales, when the sale was made to the purchaser as cash with interest added, which became and was an accustomed mode of selling lead, and that many of such sales were in fact sales on a credit of six and eight months, the difference being in favor of the vendor in his right to interest, and of which said custom and mode of dealing, and the facts in reference thereto, the said complainant at the times thereof respectively, was fully advised and informed. And these respondents further answering say, that the said complainant came to the city of Philadelphia in the month of January, 1847; that the whole of the business operations which had been carried on between him and the respondents were the subject of consultation and consideration; the books of these respondents were open to him; full statements therefrom were made to him, and he knew accurately and precisely the manner in which the respondents had conducted the said business for him, the exact nature of all the sales made on his account, the commissions which were charged and the mode in which the interest was calculated; some small items to which he had objected were allowed to him, and he was perfectly satisfied and content therewith, and made no objection of any kind thereto, but assented to, sanctioned and approved the same, and each and every part thereof. That an account current to January 1st, 1847, was sent, received, examined, understood and acquiesced in by him without objection, and these respondents hereto annex a copy of the said account as an exhibit to this answer, marked "*H*," and in respect to which they claim the same benefit as hereinbefore craved; and that the said account so containing the said sales, charges of interest and commissions was so received and

acquiesced in without objection to any item thereof, or without the presentment of any claim in respect thereto, until on or about the day of the filing of the bill in this cause; and so well satisfied and content was the said complainant with each and all of the things so done by the respondents on his behalf and for his account, that he earnestly urged them to enter into a contract with him for further business on joint account, which was done, as hereinafter mentioned. And notwithstanding which the said complainant, after a lapse of more than six years from the time at which he examined the said account and expressed himself fully satisfied therewith, and from the time when the said last named account was received and acquiesced in by him, now files his bill in this cause, claiming that there existed errors therein for the said year 1846, errors to an amount of over $13,000, which these respondents wholly deny, and aver that the said account having been so transmitted and acquiesced in, and the said time having so elapsed since any cause of action thereon or thereby accrued, and these respondents having by this their answer denied all fraud and all pretence thereof, they claim the same benefit in respect to said acquiescence and lapse of time as though the same were, if needful, duly and formally pleaded, and humbly submit that by reason thereof, the said complainant cannot be entitled to any decree of this Honorable Court.

And these respondents further answering say: That it is true that they did not at their instance and request, but that of the complainant, enter into a written contract with him, dated the 27th day of February, A. D. 1847, whereof a copy is annexed as an exhibit to this answer, marked "*K*," and that they did, during the said year, continue to transact business with the complainant in pursuance thereof, and as consignees for him, in respect to any lead or property consigned on his individual account.

And these respondents further answering say: That they did in the month of April, 1847, transmit to the complainant an account current of their dealings subsequent to the first day of January, 1847, as will thereby appear, and there was then a balance due to them by the complainant of $47,492 88; and these respondents hereto annex a copy of the said account as an exhibit to this answer, marked "*L*," and that the said account so containing such dealings as will thereby appear, was transmitted, received and examined by the complainant and no objection was then or thereafter by him made in respect to any of the items thereof, or any claim presented by reason of any supposed error therein, until about the tenth day of February, 1850, and more than six years elapsed after the claim, if any by reason thereof arose, before the filing of the bill in this cause; and these respondents claim the same benefit with respect to the said account so transmitted and received as is hereinbefore claimed and pleaded.

And these respondents further answering say: That in the month of July, 1847, they did transmit to the complainant his account of dealings, had from and after the date of the last mentioned account,

and there was then a balance due to them (including the joint account) of $843,323 87 ; and these respondents hereto annex a copy of the said accounts as exhibits to this answer, marked *M*, and that the said accounts so containing such dealings, and the charges of interest and commissions as will thereby appear, were transmitted, received and examined by the complainant.

That the respondents having learned that the said complainant had, in conversation with one of them, objected to the mode of computing interest, did advise him that for the purpose of preventing all controversy they had, for the time included in said account, altered the mode of computation thereof, as will thereby appear; that the said complainant did subsequently in the month of August of said year, claim that the said interest should be deducted, and did also object to the charge of one per cent. commissions for short drafts, to which last objection these respondents replied that they would not make such charge upon first account, and would correct any such if it appeared to have been made, and that the complainant did not reply thereto or further urge his said objection, or ever make any to the charge of commissions in the said account, as will thereby appear, and in reference to which said account so transmitted and received, and especially to the items thereof not so objected to, claim the same benefit as is hereinbefore claimed and pleaded.

And these respondents further answering say : That in the month of October, 1847, they did transmit to the complainant his account of dealings had from and after the date of the last mentioned account, and there was then a balance due to them of $98,780 69, and of which said account they annex a copy as an exhibit to this answer, marked "*N*," and the same was received, assented to, and acquiesced in, and *and* in respect to which, and to the lapse of time before the bill filed in this cause, they claim the like benefit as is hereinbefore claimed with reference to the other accounts so rendered.

And these respondents further answering say: That the said complainant again came to the city of Philadelphia in the month of January, 1848 ; that the entire business operations which had been carried on between them and the complainant during the said year, as well for him individually as on joint account, were the subject of consultation and consideration ; the books of these respondents were again open to him, full statements therefrom were made to him, and he knew accurately and precisely the manner in which the respondents had conducted the said business for him individually and on joint account, the exact nature of all the sales made, the commissions which were charged, and the mode in which the interest was calculated ; some small items to which he had objected were allowed to him as by said account will appear, and he was perfectly satisfied and content therewith, and made no objection of any kind thereto, but assented to, sanctioned and approved the same, and each and every part thereof; that an account current to January 1st, 1848, was sent, received, examined, understood and acquiesced in by him without ob-

jection; and these respondents hereto annex a copy of the said account as an exhibit to this answer, marked *O*, and respect to which they claim the same benefit as hereinbefore craved, and no objection was then or thereafter made by him in respect to any of the items thereof, nor any claim presented by reason of any supposed error therein, until about the tenth day of February, A. D. 1850; and these respondents claim the same benefit with respect to the said account so transmitted, received and acquiesced in, and with reference to the lapse of time before the filing of the bill in this cause, *and with reference to the lapse of time before the filing of the bill in this cause* in respect thereto, as is hereinbefore claimed and pleaded with respect to the account of the first quarter of said year, 1847, as though here restated at large.

And these respondents further answering say: That being so satisfied and contented as well with their conduct in that behalf as with the account so presented, it was subsequently and about the month of February, A. D. 1848, agreed between them and the complainant to continue the said business on joint account for the year 1848, upon the same terms and conditions as are set forth in the agreement hereinbefore referred to for the year 1847, and it was so understood and agreed between them.

That the complainant continued thereafter, although his attention was called to the terms of his agreement, to draw his drafts upon the said firm until at one time, viz: on the twenty-fourth day of March, his drafts exceeded the amount of property in their hands to secure the same sixty-five thousand dollars, and in the month of May, seventy thousand four hundred dollars, and in the month of June, eighty-seven thousand dollars, beyond any security in their hands, and of which said course the said firm then complained, to which complaint the complainant, without any objection or denial of its justice or propriety, answered, that he would put them in funds before the end of the year.

And the respondents further answering say: That in the month of June, 1848, they did transmit to the complainant his account of dealings had from and after the date of the last mentioned account, and there was then a balance due to them of $82,778 60 (including the joint account); and these respondents hereto annex a copy of the said account as an exhibit to this answer, marked "*P*," and that the said account so containing such dealings and the charges of interest and commissions as will thereby appear, was transmitted, received and examined by the complainant, and no objection was by him then made in respect to any of the items thereof, nor any claim presented by reason of any supposed error therein, until about the tenth day of February A. D. 1850, and after a lapse of more than one year; and these respondents claim the same benefit with respect to the said account and each and every item thereof so transmitted and acquiesced in, and lapse of time before the filing of the bill in this cause, as is hereinbefore claimed and pleaded.

And the respondents further answering say: That in the month of September, 1848, they did transmit to the complainant his account of dealings had from and after the date of the last mentioned account, and there was then a balance due to them of $68,979 34, (excluding the joint account;) and these respondents hereto annex a copy of the said account as an exhibit to this answer, marked "*P* 2," and that the said account so containing such dealings and the charges of interest and commissions as will thereby appear was transmitted, received and examined by the complainant, and no objection was by him then made in respect to any of the items thereof, nor any claim presented by reason of any supposed error therein, until about the tenth day of February, A. D. 1850, and after a lapse of more than one year. And these respondents claim the same benefit with respect to the said account, and each and every item thereof so transmitted and acquiesced in, and lapse of time before the filing of the bill in this cause, as is hereinbefore claimed and pleaded.

And these respondents further answering say: That in the month of January, 1849, they did transmit to the complainant his account of his dealings had from and after the date of the last mentioned account, and there was then a balance due to them of $62,426 62, (some lead still remaining on hand,) excluding the joint account; and these respondents hereto annex a copy of the said account as an exhibit to this answer, marked "*Q*," and that the said account so containing such dealings, and the charges of interest and commissions, as will thereby appear, was transmitted, received and examined by the complainant,and no objection was by him then made in respect to any of the items thereof, nor any claim presented by reason of any supposed error therein, until the tenth day of February, A. D. 1850. And these respondents claim the same benefit with respect to said account, so transmitted and acquiesced in, and of the lapse of time before the bill filed in this cause, as is hereinbefore claimed and pleaded.

And these respondents further answering say: That the said complainant again came to the city of Philadelphia in the month of January, A. D. 1849; that the entire business operations which had been carried on between him and the respondents during the said year, as well for him individually, as on joint account, were the subject of consultation and consideration; the books of these respondents were again open to him, full statements therefrom were made to him, and he knew, accurately and precisely, the manner in which the respondents had conducted the said business, for him individually and on joint account, the exact nature of all the sales made, the commissions which were charged, and the mode in which the interest was calculated; some small items to which he had objected, were allowed to him, as by said account will appear, and he was perfectly satisfied and content therewith, and made no objection of any kind thereto, but assented, sanctioned and approved the same; notwithstanding all which, and that each and every of the said items was justly due to these respondents, the said complainant, in his bill, unjustly charges

2899

that there were errors and overcharges in the said accounts by these respondents, to the amount of about four thousand dollars.

And these respondents further answering say: That at the interview had as aforesaid, in January, 1849, they advised the complainant that they would no longer continue the business on joint account, and requested him to make settlement of the balance which would be so due to them; that the said complainant, although admitting his liability to pay the same, and assenting thereto, and to all the items thereof, did state himself to be then unable to make payment thereof, alleging and asserting that he had purchased a large amount of real estate in Galena, and its vicinity, and for that purpose had used the funds he should have invested in lead and shipped to these respondents, the proceeds, when sold, to be credited to his account. He then offered to sell to them certain of the real estate so alleged to be owned by him, in settlement of his account, reserving the right to repurchase the same at cost, which proposition these respondents declined, but offered to give to him a long credit for the balance due if he would secure the amount by mortgage upon *upon* his real estate, which he objected solely on the ground that his credit at home would be injured thereby, and insomuch as some lead remained on hand as above stated, and the exact balance could not be ascertained until the same was disposed of, these respondents did not insist thereupon. The complainant, so satisfied and content with his dealings with these respondents, purchased from them merchandise on the usual credit, as by the said accounts will appear. That in the spring of 1849 the complainant forwarded lead from time to time, and by himself or his agents, drew drafts as by his account for the year 1849, a copy whereof is annexed as an exhibit to this answer, marked *R*, will fully appear.

And these respondents, further answering, say: That conscious of the large balance due to them by the complainant, they did on the seventeenth day of May, A. D. 1849, communicate to him that they regarded him bound to ship all the lead he had on hand at the opening of the navigation. That on the twenty-eighth day of May in said year they again communicated to him, urging consignments of lead, and informing him that if he had himself sold the same, he was bound to remit to them the proceeds. On the eighth day of June of the same year they communicated with him, asking him to ship lead to them. On the fifth day of July of the same year they again addressed him, to no one of which communications did they receive any reply. On the sixth day of July, anxious to hold out some inducement to the complainant, and to induce him to consign property, they communicated to him that if he would ship lead on his account, they would thereafter charge him a commission of two and a half per cent. only for their services in the sale thereof; and on the twentieth day of July they for the first time received a reply to the several communications above mentioned; that he did thereafter make shipments from time to time, a portion on his own account and a

portion for account of these respondents, during the summer of the year 1849, as by reference to said account, marked *R*, will appear; but the shipments being dilatory and slow, and the drafts nearly equaling in value the amount thereof, and there being an apparent cessation of shipment, and being anxious that the balance of their account should not remain so large and unsecured, they did again, viz: on the eleventh day of September, urge him to make further shipments, and having received no reply thereto, they did on the twentieth day of September, address him upon the same subject, and having received no reply thereto, they did on the first day of October again address him, urging more strongly the necessity of his forwarding lead to meet the account; and having received no reply to any of said letters, did on the twelfth day of October, telegraph to him to the same effect, which remained unanswered: These respondents, alarmed at the inattention of the complainant, and fearing that he intended unjustly to deal with them for and in respect of the large balance so due, one of them, viz: John Yarrow, left the city on the fifteenth day of October, to visit the said complainant, taking with him his accounts so far as the same could then be settled, there being lead unsold on hand, and on the way; copies of which said accounts so taken, these respondents crave leave to produce (the drafts for the purchase of four thousand pigs of lead, and the proceeds of about six thousand pigs of lead were not therein included, inasmuch as the lead had not all arrived). On the fifteenth day of October, and after the departure of the respondent, Yarrow, the complainant communicated, in reply to the said various letters, attempting to explain the cause of his delay, and his inability to ship all he had agreed to do, desiring these respondents to extend their indulgence to him, and that he would pay the balance of their claim as fast as he could, without unnecessary delay. That the respondent Yarrow, after reaching Galena, and meeting the said Davis, and after much negotiation with him, and after the exhibition to him of said accounts, to the correctness of which he assented, and although it was distinctly understood between the said Yarrow and the said complainant, that the amount of his indebtedness to these respondents would equal (when the accounts could be closed by sales of the lead undisposed of), the sum of about thirty-four thousand dollars; yet the said Yarrow, in order to secure $29,000 thereof, entered into a written agreement, dated the twenty-fourth day of October, 1849, as by a copy thereof, hereto annexed as an exhibit to this answer, marked *S*, will fully and at large appear. That inasmuch as all the lead which had been consigned by him had not been received and sold, it was impossible to ascertain with entire accuracy the exact balance which would be due by said complainant, and the said arrangement was made and understood by both parties only as securing $29,000 of the amount thereof. That the said complainant well knew that the said balance would be much more than that sum, made no objection of any sort to the accounts which had from

time to time been rendered to him, but expressed himself satisfied therewith. And these respondents having, as they verily believed, secured themselves to so large an extent, were content to extend to the complainant every reasonable indulgence for the payment of the balance which he and they knew would result upon the accurate settlement of their accounts.

And these respondents, further answering, say: That the said complainant did make and deliver, though not at the time agreed to, the deeds and notes in the said agreement specified. That about the eleventh day of February, 1850, George Ferguson did in the city of Philadelphia, deliver to the respondents the deeds and notes in the said agreement mentioned, but he did not then deliver to them any letter from the complainant. And these respondents did, upon the receipt of such notes and deeds, execute and deliver to said Ferguson receipts, copies of which are hereto annexed as an exhibit to this answer, marked *T*. That after the said arrangement was completed, the said Ferguson did hand to these respondents some accounts which he averred had been made out by said complainant, claiming deductions for commissions and interest, amounting in the whole to four thousand dollars, as by said accounts will appear: and to which these respondents immediately replied to said complainant, that the said demands were inadmissible, and could not and would not be sanctioned by them. That on or about the ninth day of April, they received a letter from said Ferguson, enclosing one from the complainant, dated twenty-eighth day of January, A. D. 1850, and which letter had not been delivered by said Ferguson as above stated. That these respondents were ready and willing, had the said letter been delivered to them, to put the agreement for the resale of the premises so conveyed in any form which should have been desired by the complainant, their object having always been merely to obtain security for so much of the amount so due to them by said complainant. That in and by the said letter in the complainant's bill referred to, the said complainant states his indebtedness at that date at $27,928 48, after deducting sums then by him for the first time claimed as errors and overcharges in accounts long before rendered, settled and adjusted as hereinbefore stated, and by which no suggestion even was made at the time of the agreement entered into with the respondent Yarrow; that to said communication these respondents promptly replied to said Ferguson, and did and have always denied that the said declarations in the said letter mentioned, or any part thereof, were due or proper, or could or ought to be made.

And these respondents, further answering, say: That the first of the said notes fell due upon the twenty-fourth day of October, A. D. 1850, and was paid by said complainant; and these respondents did therefrom, in accordance with their agreement, and at his request, reconvey one of the premises so by them held, and by him specially designated, as by the deed therefor will appear; that the second of the said notes fell due upon the twenty-fourth day of October, A. D.

1851, and was paid by said complainant; and these respondents did thereupon, in accordance with their agreement, did at his request reconvey other of the premises so by them held, and by him specially designated, as by reference to the deed therefor will appear. That the third of the said notes fell due upon the twenty-fourth day of October, A. D. 1852, and was paid by said complainant, and these respondents did thereupon, in accordance with their agreement and at his request, reconvey other of the premises so by them held, and by him specially designated; that the premises so reconveyed will fully appear by the conveyances therefor, to which reference is craved; that the remaining note which was not paid at maturity and the remaining premises not so reconveyed, are still held by these respondents as hereinbefore stated, and that no other person than these respondents has any interest, property or claim to said note or premises.

And these respondents, further answering, say: That they did from time to time during the whole course of their dealings with the said complainant, in addition to the accounts hereinbefore referred to, render him short accounts, setting forth the sales made by them from time to time and setting forth the charges for commissions now complained of, as hereinbefore stated, but to none of which accounts as rendered, or to the charges therein contained, was any objection made or presented by the complainant, and which said short accounts so rendered from time to time, they crave leave to produce, and to be entitled to the same benefit thereof as though here formally set forth.

And these rspondents, further answering, say: That in and by the said accounts hereinbefore referred to and annexed, there will appear a full and true account of the lead received, the drafts drawn, and of the proceeds of the sales thereof, both on the joint account and the individual account of the complainant, and that they have hereto annexed as an exhibit to this answer, marked *U*, an account by which it is shown to what person or persons the said lead was sold, the name of such person or persons, the time and the price at which it was sold, and whether the same was sold for cash or on credit, and at what credit: that it is impossible at this time with reference to each or all of the said sales, to designate which thereof was made after the actual arrival of the lead and which before, such statement could only, if at all, be prepared (and would then probably be inaccurate) by a comparison of the time of arrival of all the ships, with the time of sale of the lead, and might then, with the exercise of every care and a devotion of months of time and labor which it would require, fail correctly to discriminate in that respect, nor can the same, as they are advised, be in anywise material to the rights of the complainant: that the said lead, whenever it did arrive, was always sold at the full and fair value thereof, and all sales made by them of lead to arrive, were, after the exercise of every diligence upon their part, made at the very best prices that could be obtained

therefor, in good faith, with entire fidelity to the complainant, and at a time when they were largely in advance, without security, and of each and all of which sales so made, the complainant was promptly advised, as hereinbefore stated: that they were authorized by the complainant to use their own judgment and discretion with reference to the manner and time of selling the property so consigned to them, and did on all occasions so exercise the same, and did in no respect sell or dispose of the property of the complainant in any other way or manner than they would have treated the same had it been their own in the like position.

And these respondents, further answering, say: That it never was agreed between them and the complainant that the pig lead shipped by him to them should be sold by them, when sold for cash and at a commission of two and a half per cent.; and that when sold on time, an additional amount of two and a half per cent. for guaranteeing the sale, but the contrary thereof is true; and the respondents were and are entitled to a commission of five per cent. upon all sales made by them for the complainant, and the same is but a reasonable, customary and proper compensation for their time, labor, and credit, so freely, constantly, and faithfully rendered to the complainant. That the term nett sales in the said accounts respectively, does not mean, as the said complainant by the tenor of his bill seems to charge, that such sales are for cash, and very often in the hurried accounts sales sent to him from time to time and made as above referred to, sales were rendered as cash sales, not thereby meaning or being sales for cash received, but sales on credit with interest added, and which thereby became equivalent to cash. That the amount of lead which the complainant did ship to them in the year 1843, will appear by the accounts hereinbefore referred to and annexed.

That the said written agreement of February 27th, 1847, was not entered into at the solicitation and request of these respondents, but at the suggestion of the complainant, they assenting thereto; and that the amount of lead shipped under and in pursuance thereof, as well as the amount shipped by the complainant, both on his own and joint account, during the years 1847, 1848, 1849 and 1850, will fully appear by the accounts hereinbefore referred to and hereto annexed.

And these respondents deny that the accounts between themselves and the complainant remained unsettled or unadjusted, as in said bill is charged, but aver that the same were from time to time settled, adjusted, and acquiesced in, as hereinbefore specially stated; and further aver that full and final settlements were from time to time made both of their joint and individual transactions; and during the whole course of their dealings, the said complainant was accurately and minutely informed and acquainted with, and had full and perfect knowledge of all the items in the said accounts mentioned, and each and every item thereof, and especially of those which he now unjustly avers to be errors, mistakes, and overcharges therein; that he did from time call their attention to the small errors and

inaccuracies on both sides of the account, thereby showing his familiarity therewith, and which were always promptly and immediately corrected, and the whole matter adjusted during his visits at Philadelphia, as hereinbefore stated.

And these respondents, further answering, say: That they deny that the complainant at the time that the arrangement was entered into by him with the respondent, Yarrow, did not know and fully understand those items which he nows falsely avers to be overcharges, errors, mistakes and frauds; and do further deny that he did not then know the condition of the account between them, its exact balance, insomuch as all the lead consigned had not been sold, he could not know; but being aware, as he was, of the amount of drafts he had drawn, the accustomed charges thereupon, the amount of lead by him shipped, and nearly the market value thereof, he did then know that in any event his indebtedness to them would not be less than thirty thousand dollars; and that the said arrangement was made with intent to secure twenty-nine thousand dollars thereof; that no arbitrary amount was taken as the basis of the negotiation, but the said accounts were by the said Yarrow exhibited and shown to him, and the object of said arrangement was to secure to the respondent twenty-nine thousand dollars of an indebtedness which he, the complainant, knew in any event must equal more than that sum; and that the said Yarrow made with the complainant no other agreement or arrangement than as in said contract is set forth, and had no understanding of any sort with him in reference to any future adjustment of said accounts, as in the said bill is falsely charged, but did promise so soon as the lead was sold and account thereof made up, to pay the balance on his first visit to Philadelphia, to which place he never afterwards came.

And these respondents, further answering say: That they deny that there had been, at the time the same was executed, no settlement or adjustment of the individual or joint account of the complainant with them, but aver that the same had been settled and adjusted as hereinbefore stated, and especially that the same were settled and adjusted in January, 1849, as hereinbefore fully stated; and they further deny that the same remains open and unadjusted to this day. And these respondents, further answering, say, that they deny that at the time the complainant transmitted, by the hands of George Ferguson, his account falsely alleged of errors, overcharges, and frauds, that he did not then know each and every of the items of the accounts so from time to time rendered to him; that it is true when the said notes and deeds were delivered, the said agreement was cancelled, but inasmuch as the said Ferguson did not exhibit to these respondents the letter so entrusted to him, nor any authority from the complainant to make any agreement for him, they had no evidence in their possession of his undertaking to repurchase the premises in return for their agreement to resell, and so suggested to said Ferguson; that in accordance with the terms of their arrangement they

believed that the said complainant should be bound to repurchase as well as these respondents to resell; and had the said Ferguson presented the said letter, they would have executed that agreement in any form desired by said complainant, as their sole object was security, notwithstanding the unfounded charges thereby for the first time presented, and that the complainant hath suffered no injury by reason of the absence of any particular form of agreement in reference thereto, as they have, upon payment of said notes respectively, reconveyed the premises as designated by him, as hereinbefore stated.

And these respondents, further answering, say: That they do not know and do not admit, that the said Ferguson violated his instructions, as in the said bill is charged, nor do they admit that the said account so falsely made, as sent by said Ferguson, was not complete; and they deny that the same was, when so presented, offered as a compromise and settlement, but admit that the same was rejected by them, as in equity, justice, and good faith it should have been; and these respondents deny that there are any illegal, erroneous, or improper charges in any of their accounts rendered to the complainant, or that there were any false or fraudulent accounts of sales rendered or reported by them to him, but aver and assert that each and all of the said accounts are just, faithful, in accordance with the agreements entered into between them, and truly and honestly in all respects exhibit their dealings.

And these respondents deny that any of the said items in the said bill specially referred to are errors or overcharges, or false or fraudulent, or improper or illegal charges, as by the said complainant is averred. That it is true that three of the said notes have been paid and premises reconveyed, as hereinbefore stated. That these respondents, expecting that the said remaining note would have been paid at maturity, as in honesty it should, and in order that the complainant might be subjected to no delay in respect thereto, did execute a deed to the complainant for the remaining premises, and did transmit the same to Foster & Stahl with the said remaining note, said deed to be delivered when said note was paid—the said Foster & Stahl having no interest of any kind therein—and that when the said note remaining unpaid became due, the same was deposited with counsel, viz: E. R. Hooper and John W. Campbell, for collection merely. And these respondents deny that they are indebted to the complainant in any sum, and aver that he is now justly and truly indebted to them in the sum of $12,579 14, with interest from the fifteenth day of November, A. D. 1853.

And these respondents further answering say: That they deny that any agreement other than that appearing in writing, and hereinbefore referred to, was ever made with the said Yarrow, or that the complainant was ignorant at any time of the true nature and character of each and all of the items in said account.

And these respondents further answering say: That they deny that they ever did, in any instance, charge as made, sales that in fact

were not made at the time, or that they ever did charge improperly or in violation of any agreement, expressed or implied, a guarantee commission, or that they ever did overcharge a guarantee commission upon any sales made by them for the complainant.

And these respondents further answering say: That they deny that they ever illegally or unjustly did charge interest on interest in making up and rendering an account to the complainant, and that such interest, as by said accounts appears, was charged as hereinbefore stated, and according to the custom of merchants, and of the dealings and contract with the complainant. And they further deny that they ever did sell lead to arrive at a less price than the actual cash value thereof in the market when the same was sold, or that they ever did illegally, improperly or unjustly, make sales on time, charging interest on the same, and commission, and guarantee, but the truth in relation thereto is as hereinbefore stated. And they also deny that they ever did, illegally, improperly, or unjustly, charge interest on balance of interest, the said charge, when appearing in said accounts, having been made as hereinbefore set forth.

And these respondents further answering say: That they deny that on a full, fair and just accounting and settling, no less than the sum above stated is due to them. And they further deny that they well knew the fact, that no large amount was in fact and in truth due them when said arrangement was made with said Yarrow; and they deny any errors, overcharges, false or fraudulent charges made against the complainant, or that they had, at any time, any intent or design, without any settlement of accounts, to get the advantage of the complainant, and force him to pay large sums of money, or that at any time they assumed any amount as being due arbitrarily, and then pretended that they had fears of losing so large a debt, and wished to have the same secured, or made any statement or agreement that the said accounts were to be thereafter fully and fairly adjusted, but the truth in relation thereto is as hereinbefore stated.

And these respondents further answering say: That they deny that they ever did, in any of their dealings and transactions with the complainant, act in any manner, or do anything contrary to the usage of merchants, equity or good faith, or in violation of the rights of the complainant, but have in all things well and faithfully dealt with and for him.

And these respondents deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, avoided, traversed or denied is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver,

maintain and prove, as this Honorable Court shall direct, and hereby pray to be hence dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

RICHARD D. WOOD,
JOHN YARROW,
JAMES ABBOT,
JOSIAH BACON.

HOOPER, ARNOLD,
LARNED & LAY,
Defendant's Solicitors.

UNITED STATES,
Eastern District of Pennsylvania, set:

On this sixth day of April, A. D. 1854, before me, Charles F. Heazlitt, a Commissioner appointed by the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, under the laws of the United States to take affidavits and acknowledgments of bail, &c., personally appeared Richard D. Wood, James Abbott and Josiah Bacon, who being duly and severally affirmed, declare and say that they have read the foregoing answer, and know the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated to be on their information and belief, and as to those matters they believe it to be true.

RICHARD D. WOOD,
JAMES ABBOTT,
JOSIAH BACON.

Affirmed and subscribed before me this 6th day of April, A. D. 1854.

CHAS. F. HEAZLITT,
U. S. Com'r.

UNITED STATES,
Eastern District of Pennsylvania, set:

On this sixth day of April, A. D. 1854, before me, Charles Heazlitt, a Commissioner appointed by the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, under the laws of the United States to take affidavits and acknowledgments of bail, &c., personally appeared John Yarrow, who being duly sworn, did depose and say that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes it to be true.

JOHN YARROW.

Sworn and subscribed before me this 6th day of April, 1854.

CHAS. HEAZLITT,
U. S. Com'r.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

I, George Plitt, Clerk of the Circuit Court of the United States of America for the Eastern District of Pennsylvania, in the Third Circuit, do hereby certify that I am well acquainted with the handwriting of Charles F. Heazlitt, Esquire, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting; and I do further certify that he was at the time of signing the same, and still is a Commissioner of the said Circuit Court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said Circuit Court, at Philadelphia, [SEAL.] this sixth day of April, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of these United States the seventy-eighth.

GEORGE PLITT,
Clerk of C. C.

And also on said 19th Dec., 1853, Pleas in the Circuit Court of the county of Jo. Daviess, in the State of Illinois, which said Pleas follow in these words, to wit:—

STATE OF ILLINOIS,
Jo. Daviess County, ss: Circuit Court of said County.

Pleas in the Circuit Court, on the Chancery side thereof, begun and held at Galena, within and for said County of Jo. Daviess, on the 28th day of November, A. D. 1853, before the Hon'l Benjamin R. Sheldon, Presiding Judge of the 14th Judicial Circuit, in the State of Illinois.

ALEXANDER C. DAVIS
vs.
RICHARD D. WOOD, JOHN YARROW, JAMES ABBOTT and JOSIAH BACON, partners under the name and style of Wood, Abbott & Co., THOMAS FOSTER, NICHOLAS STAHL, E. R. HOOPER and JOHN W. CAMPBELL.

Be it remembered that heretofore, to wit, on the 28th day of November, A. D. 1853, of the said November term of the said Court, in the records of the proceedings thereof, is the following entry, to wit:—

ALEXANDER C. DAVIS
vs.
RICHARD D. WOOD, JOHN YARROW, JAMES ABBOTT and JOSIAH BACON, partners under the name and style of Wood, Abbott & Co., THOMAS FOSTER, NICHOLAS STAHL, E. R. HOOPER and JOHN W. CAMPBELL.

Bill in Chancery.

The said defendants, Wood, Abbott & Co., by Hooper and Campbell, their Solicitors, come and enter their appearance herein, and after filing a bond in the penalty of one thousand dollars, with Nicholas Stahl as security, which is approved by the Court, they move the Court, on the petition of the said Wood, Abbott & Co., filed herein, that this cause be removed for trial to the next Circuit Court of the United States, which motion is resisted by the complainant's solicitor.

And afterwards, to wit, on the 29th day of November, at the said November term of said Court, upon the records of said Court, is the following entry, to wit:—

ALEXANDER C. DAVIS
vs.
RICHARD D. WOOD, JOHN YARROW, JAMES ABBOTT and JOSIAH BACON, partners under the name and style of Wood, Abbott & Co., THOMAS FOSTER, NICHOLAS STAHL, E. R. HOOPER and JOHN W. CAMPBELL.

Bill in Chancery.

Now at this comes on to heard the motion yesterday made on petition filed herein by the said defendants, Wood, Abbott & Co., for the removal of this cause for trial to the Circuit Court of the United States, after argument of counsel, and it being admitted by the defendant's solicitor, that the said Thomas Foster, Nicholas Stahl, E. R. Hooper and John W. Campbell, against whom injunctions were ordered by this Court for the purposes stated in said bill of complaint, are residents of the State of Illinois, and after due consideration by the Court, the Court decide to proceed no further in said cause; to all of which ruling and decision of the Court the complainant by his solicitor excepts.

STATE OF ILLINOIS,
Jo. Daviess County, ss:

I, William H. Bradley, Clerk of the Circuit Court in and for said county, do hereby certify that the foregoing transcript is a true and correct copy of the record of the proceedings of said Court, of all the proceedings had in the said Circuit Court in the case of Alexander C. Davis against Richard D. Wood, John Yarrow, James

Abbott and Josiah Bacon, partners under the name and style of Wood, Abbott & Co., Thomas Foster, Nicholas Stahl, E. R. Hooper and John W. Campbell, and that the accompanying papers, to wit, the bill or petition of the complainant marked "*A*," the injunction bond marked "*B*," the summons marked "*C*," the writ of injunction marked "*D*," the petition for removal marked "*E*," and the bond marked "*F*," are all of the original papers in my office and appertaining to said cause, and are herewith transmitted, together with this transcript, to the Circuit Court of the United States in Illinois.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said Court, at my office in Galena, in said County, this 14th day of December, A. D. 1853.

Attest: WILLIAM H. BRADLEY,
Clerk.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
District of Illinois, ss:

Be it remembered that heretofore, to wit, on the 19th day of April, A. D. 1854, of the April term of said Court, begun and held at Chicago in said District, on the 18th day of April, A. D. 1854, in the records of the proceedings thereof is the following entry, to wit:—

Wednesday, April 19, 1854.

ALEXANDER C. DAVIS
vs.
WOOD, ABBOTT *et als.*

This day come the defendants by their solicitors, filed their answer, and filed their motion to dissolve the injunction in this cause; and the complainants filed their motion to remand the cause to the State Court.

And afterwards, to wit, on the 29th day of April, A. D. 1854, at the said April term of said Court, upon the records of said Court is the following entry, to wit:—

Saturday, April 29th, 1854.

ALEXANDER C. DAVIS
vs.
WOOD, ABBOTT *et als.*

This day come the parties by their solicitors, and the complainant filed and argued a motion to remand this cause to the State Court, when, the Court not being sufficiently advised in the premises, took time to consider.

And afterwards, to wit, on the 18th day of May, A. D. 1854, at the said April term of said Court, upon the records of said Court is the following entry, to wit:—

Thursday, May 18, 1854.

ALEXANDER C. DAVIS
vs.
WOOD, ABBOTT *et als.*

After due consideration of the arguments of Counsel, on the motion to remand this cause to the State Court, it is ordered that the cause be remanded to the Court from which it was sent; and it is further ordered, that either party have leave to withdraw any papers filed by them in this Court.

Filed 29th June, 1855.